no alternative but to quash the conviction for murder. Fortunately we do not have to consider a retrial and we substitute a conviction for culpable homicide not amounting to murder and sentence the accused to ten years imprisonment from the date of arrest.

Conviction substituted.

Solicitors:—*Shook Lin & Bok.*

BAN HIN LEE BANK LTD. v. TAN KHOO SOEI & ORS.

[O.C.J. (Buttrose J.) June 6, 1963]

[Singapore — Suit No. 1598 of 1960]

Landlord and Tenant—Injunction to restrain trespass—Monthly tenant—Notice to quit—Failure to comply with—Creation of statutory tenancy—Death of statutory tenant—Landlord having no knowledge of—Subsequent acceptance of rent—Administrator purporting to sub-let part of premises—Whether new contractual tenancy created.

When a monthly tenant fails to comply with a valid notice to quit a statutory tenancy is created. A statutory tenancy is merely a personal right to possession or occupation of the premises and such tenancy is extinguished at the death of the statutory tenant and nothing passes to his estate. The mere acceptance of rent by the landlord from the person then in occupation of the premises does not necessarily constitute a new tenancy.

Cases referred to:—

(1) *Davies* v. *Briston* [1920] 3 K.B. 428.
(2) *Clarke* v. *Grant* [1949] 1 All E.R. 768.
(3) *Marcroft Wagons Ltd.* v. *Smith* [1951] 2 All E.R. 275.

ACTION.

A. P. Godwin for the plaintiff.

A. Muthuswamy for the defendants.

Buttrose J. (delivering oral judgment): In this action the plaintiff claims an injunction restraining the defendants and their servants or agents from trespassing on its property at 52 Circular Road and damages for such trespass. The plaintiff bank also seeks a declaration that the right, title and interest of K. Shaik Abdul Kadir in the premises terminated on his death. The plaintiff also claims possession.

The facts as I find them, clearly established by the evidence, are briefly these. The premises in question, No. 52 Circular Road are next door to the plaintiff bank. The premises were let apparently many years ago before the war to one K. Shaik Abdul Kadir on a monthly tenancy. The premises were used as business premises and the rent, which was always paid in cash, was usually collected by the plaintiff's rent collector and occasionally paid by someone representing the tenant to an official of the bank direct. The receipts were made out in the name of K. Shaik Abdul Kadir. For many many years—as far back even as before the war—the plaintiff bank required vacant possession of these premises in order to expand its business but the outbreak of war prevented the implementation of this expansion scheme. After the cessation of hostilities a Notice to Quit was served on the tenant to vacate by the 31st October 1946 but the tenant refused to comply and proceedings for possession were taken but these were unsuccessful. Rent continued to be paid thereafter by the tenant which was accepted by the bank. This state of affairs continued on until September 1960. The previous month, in August 1960, a member of the bank's staff noticed a document affixed to the door of the premises in question. It turned out to be a Writ of Seizure and Sale against one M. M. Ali of whom the plaintiff had no knowledge. As a result of this the plaintiff immediately consulted its solicitors and rent was refused when next tendered. The letter of 21st September 1960 (page 15 of the Agreed Bundle) was the first intimation that the plaintiff had that K. Shaik Abdul Kadir was not still in occupation of the premises and in fact had died as long ago, according to the evidence as 1947 in India. A second Notice to Quit in January 1951 was issued and served under the misapprehension that K. Shaik Abdul Kadir was still alive and in occupation. In November 1960 the administrator of the estate of K. Shaik Abdul Kadir, deceased purported to sublet part of the premises to the first defendant. A letter before action was sent on the 2nd November 1960 and notice was given to the first defendant on the same date that he would not be recognised as a sub-tenant. Proceedings were commenced by Writ of Summons on the 11th November 1960.

What then is the legal position arising out of these facts? K. Shaik Abdul Kadir's tenancy was determined on the 31st October 1946 by a valid Notice to Quit with which, as I have already said, he did not comply and he remained on in possession of the premises by virtue of the provisions of the Increase of Rent (Restriction) Ordinance, 1939, (No. 35 of 1939) as amended by the Increase of Rent (Restriction) (Amendment) Ordinance, 1941 (No. 30 of 1941) which was the appropriate and material legislation in force at the time. A statutory tenancy was, in my judgment, created and K. Shaik Abdul Kadir became a statutory tenant and continued so to be until the date of his death. Now, a statutory tenant has merely a personal right to possession or occupation of the premises and such tenancy is extinguished at his death and nothing passes to his estate. The fact that after the expiration of a Notice to Quit the tenant makes payment of rent to the landlord which the latter accepts does not necessarily constitute a new tenancy. The

effect of the payments depends entirely upon the intention of the parties. If authority is needed see *Davies* v. *Briston*[1], *Clarke* v. *Grant*[2], *Marcroft Wagons Ltd.* v. *Smith*[3]. There must be clear evidence on both sides of an intention to create a new contractual tenancy and there is no such clear evidence of such intention here. The plaintiff bank always wanted possession. There is no evidence of any intention whatever of creating a new contractual tenancy with K. Shaik Abdul Kadir or anyone else. The mere acceptance of rent is, to use a not inapt phrase of Mr. Godwin, perfectly neutral. The purported subletting to the first defendant as a result has no effect in law whatsoever. For these reasons, therefore, in my judgment, the plaintiff is entitled to the relief which it seeks.

There will be an order that the defendants deliver up possession of the premises to the plaintiff on or before the 31st July 1963. The defendants must pay the plaintiff damages for trespass at the rate of $93.75 per month to date of giving up possession. There will be an injunction restraining the defendants, their servants and agents from trespassing on the premises. There will also be a declaration that the right, title and interest, if any, of K. Shaik Abdul Kadir in the premises terminated on his death. The defendants must pay the plaintiff's costs of action on the higher scale.

Claims allowed.

Solicitors:—*Donaldson & Burkinshaw; Muthu & Co.*

THE CHARTERED BANK v. PACKIRI MAIDEEN & ANOR.

[O.C.J. (Gill J.) June 10, 1963]

[K.L. — Originating Summons No. 230 of 1962]

Land Code (Cap. 138), ss.149 to 154—Sale of land by public auction—Order by Court to that effect—Whether order can be set aside—Whether publicity and disgrace to family, ground for setting aside order.

Practice and Procedure—R.S.C. 1957, O.54 r.28.

Sections 149 to 154 of the Land Code contemplate the sale of land by public auction. Although it is open to the parties to sell the lands by private treaty before any proceedings are commenced in Court, once such proceedings are commenced the lands have to be sold by public auction. An order for sale by public auction should not be set aside merely because one of the parties wishes to sell it by private treaty in order to avoid publicity and consequent disgrace to his family.

APPLICATION by way of Originating Summons.

Morris Edgar for the applicant.

Second respondent in person.

Gill J.: This was an application by way of Originating Summons under section 149 of the Land Code (F.M.S. Cap. 138) requiring the respondents to show cause why certain lands, the subject matter of charges executed by the respondents in favour of the applicant, should not be sold by public auction under the direction of this Court. The application was supported by the affidavit of an attorney of the applicant stating that notices had been served upon the respondents in accordance with the provisions of sections 138 and 139 of the Land Code and that the respondents had failed to comply with the said notices, thereby making a default in the payment of the principal sum and interest due on the said charges, which default had continued for the space of more than one month.

The Originating Summons was taken out on 21st November, 1962. The first respondent did not enter an appearance to these proceedings. The second respondent entered an appearance on 15th March, 1963. A notice of appointment to hear the Originating Summons was taken out on 20th March, 1963, and the Originating Summons first came up for hearing on 1st April, 1963 when it was adjourned to 22nd April, 1963. On 22nd April, 1963 the second respondent filed an affidavit to say that he objected to the sale of the lands by public auction because he had a purchaser, one Dr. G. D. Smith, who was willing to purchase the lands for a sum of $75,000. The amount due on the charges then was $68,905.91. The hearing of the summons was then adjourned by consent to 6th May, 1963 and later adjourned to 13th May, 1963.

On 13th May, 1963 the only question was whether the property should be sold by public auction or by private treaty. The second respondent at no stage of the proceedings had stated that he had any cause to show why the lands should not be sold. A number of letters had been written to this Court by various people to say that they were prepared to purchase the lands for various amounts, the highest of which was $100,000. As the amount realised at the sale in excess of the amount due under the charges would become payable to the respondents, I felt that in the interests of justice to both respondents the lands should be sold for the highest amount they could fetch. There were indications that if the lands were sold by public auction they would fetch a sum considerably in excess of the amount due on the charges to the applicant. I therefore made an order accordingly.

It is to be observed that Sections 149 to 154 of the Land Code contemplate the sale of land by public auction. It is of course open to the parties to sell the lands by private treaty before any proceedings are commenced in Court, but